

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
REX JONES,

Plaintiff,

-against-

THE CITY OF NEW YORK, POLICE OFFICER LUIS
ORTIZ (Shield 1133, Tax ID 934038, 43rd precinct) and
JOHN DOES # 1-5,

Defendants.
----- x

**ANSWER OF DEFENDANT
LUIS ORTIZ**

08 Civ 4618 (JGK)

JURY TRIAL DEMANDED

Defendant Luis Ortiz, by his attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, as and for an answer to plaintiff's Complaint ("Complaint"), respectfully alleges, upon information and belief, as follows:

1. Denies the allegations set forth in paragraph "1" of the Complaint, except admits that plaintiff purports to bring this action as stated therein.
2. Denies the allegations set forth in paragraph "2" of the Complaint, except admits that plaintiffs purport to invoke the jurisdiction of this Court as stated therein.
3. Denies the allegations set forth in paragraph "3" of the Complaint, except admits that plaintiffs purport to invoke the jurisdiction of this Court as stated therein.
4. Denies the allegations set forth in paragraph "4" of the Complaint, except admits that plaintiffs purport to lay venue as stated therein.
5. Denies the allegations set forth in paragraph "5" of the Complaint, except admits that plaintiffs purport to invoke the jurisdiction of this Court as stated therein.
6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "6" of the Complaint.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “7” of the Complaint.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “8” of the Complaint.

9. Admits that the plaintiff purports to proceed as set forth in paragraph “9” of the Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “10” of the Complaint.

11. Denies the allegations set forth in paragraph “11” of the Complaint, except admits that the City of New York is a municipal corporation organized under the laws of the State of New York and that it maintains a police department.

12. Admits the allegations contained in paragraph “12” of the Complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “13” of the Complaint.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “14” of the Complaint.

15. Paragraph “15” of the Complaint contains legal conclusions to which no response is required.

16. Denies that the arrest of plaintiff was illegal, denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning certain alleged John Doe officers, otherwise admit the allegations contained in paragraph “16” of the Complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “17” of the Complaint.

18. Denies the allegations contained in paragraph "18" of the Complaint.

19. Denies the allegations contained in paragraph "19" of the Complaint.

20. Denies the allegations contained in paragraph "20" of the Complaint.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "21" of the Complaint.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "22" of the Complaint.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "23" of the Complaint.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "24" of the Complaint.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "25" of the Complaint.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "26" of the Complaint, except admits that plaintiff has annexed documents to the Complaint.

27. Denies the allegations contained in paragraph "27" of the Complaint.

28. In response to the allegations set forth in paragraph "28" of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

29. Denies the allegations contained in paragraph "29" of the Complaint.

30. In response to the allegations set forth in paragraph “30” of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

31. Denies the allegations contained in paragraph “31” of the Complaint.

32. Denies the allegations contained in paragraph “32” of the Complaint.

33. Denies the allegations contained in paragraph “33” of the Complaint.

34. In response to the allegations set forth in paragraph “34” of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

35. Denies the allegations contained in paragraph “35” of the Complaint.

36. Denies the allegations contained in paragraph “36” of the Complaint.

37. In response to the allegations set forth in paragraph “37” of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

38. Paragraph “38” of the Complaint contains legal conclusions to which no response is required.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

41. The Complaint fails, in whole or in part, to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

42. Defendant Ortiz has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political

subdivision thereof, nor has the defendant violated any act of Congress for providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

43. At all times relevant to the acts alleged in the Complaint, defendant Ortiz acted reasonably in the proper and lawful exercise of his discretion.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

44. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct and was not the proximate result of any act of the defendant.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

45. There was probable cause for plaintiff's arrests and/or detentions.

AS AND FOR AN SIXTH AFFIRMATIVE DEFENSE:

46. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

47. Plaintiff has failed to comply with all conditions precedent to suit.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

48. Defendant Ortiz is immune from liability under the doctrine of qualified immunity.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

49. This Court lacks jurisdiction over defendant Ortiz.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

50. Service of the Summons and Complaint upon Ortiz was insufficient.

WHEREFORE, defendant Ortiz requests judgment dismissing the Complaint in its

entirety, together with the costs and disbursements of this action and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
July 25, 2008

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendant City and Luis Ortiz
100 Church Street
New York, New York 10007
(212) 788-0786

By: /s/
Michael K. Gertz

TO: Joel Berger, Esq. (by ECF)